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VIOLA SULLIVAN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VIOLA SULLIVAN, an individual,

Plaintiff,

vs.

COUNTY OF TEHAMA, a public entity,
TEHAMA COUNTY SHERIFF'S OFFICE,
a public entity, DAVE HENCRATT, Tehama
County Sheriff, in his individual and official
capacity as Sheriff, JESSE BROWN, Deputy,
an individual, DANIELLE GIBSON, an
individual,
DOES 1-25 inclusive,

Defendants.

CASE NO.: 2:23-cv-02351-MCE-KJN

**STIPULATION AND ORDER TO STAY
MATTER PENDING
UNAVAILABILITY OF PLAINTIFF'S
COUNSEL AND FURTHER
PROCEEDINGS IN PLAINTIFF'S
UNDERLYING CRIMINAL MATTER
IN STATE COURT**

RECITALS

1. Plaintiff is Viola Sullivan (hereinafter, “Plaintiff”), represented by Alex Cabeceiras at DEREK SMITH LAW GROUP, LLP.
2. Defendants are County of Tehama, Tehama County Sheriff’s Office, Dave Hencratt, Jesse Brown, and Danielle Gibson (hereinafter collectively referred to as “Defendants”), represented by Patrick L. Deedon and Tracey A. Werner, at MAIRE & DEEDON.
3. Plaintiff filed her First Amended Complaint on December 4, 2023 [ECF 13].
4. Defendants filed their Answer to the First Amended Complaint on January 8, 2024 [ECF 17].
5. Plaintiff brings this complaint for damages under 42 U.S.C. §1983, alleging that defendants violated her Fourth and Fourteenth Amendment rights. The alleged constitutional violations occurred during the course of Plaintiff’s arrest for a violation of California Penal Code §148(a).
6. Plaintiff further alleges municipal liability against the County for failing to train and discipline their law enforcement officers, for their alleged deliberate indifference with respect to the conduct of their officers.
7. Following her arrest, the Tehama County District Attorney filed a criminal case against the Plaintiff for the §148(a) misdemeanor violation, which case remains pending in Tehama County Superior Court as case number 22CR002866.
8. There is a pretrial hearing in Plaintiff’s criminal matter on February 28, 2024, at which time she is expected to ask the Court to grant her motion for pre-trial diversion. The trial date is currently scheduled for April 24, 2024.

1 9. While Counsel for the parties mutually agree that not every criminal conviction for
2 resisting arrest under Penal Code §148(a) would bar a subsequent civil action against the
3 arresting officer for excessive force under §1983 pursuant to the *Heck* Doctrine¹, Counsel
4 for the Defendants asserts that whether or not *Heck* applies cannot be evaluated until the
5 criminal case is formally concluded. In this case, the criminal matter will not be concluded
6 until either diversion is complete or trial is concluded, whichever occurs sooner.
7

8 10. Counsel for the parties spoke by telephone on January 24, 2024, to begin their Rule 26(f)
9 conference.

10 11. During the Rule 26(f) conference, Counsel for Plaintiff advised that he would be going out
11 on paternity leave beginning February 18, 2024, and continuing for approximately 4
12 weeks.
13

14 **STIPULATIONS**

15 **IT IS HEREBY STIPULATED and AGREED** by and between Plaintiff and Defendants,
16 through their respective counsel of record, that:

17 12. The parties stipulated to a stay of this matter for all purposes, including all discovery and
18 Rule 26 obligations, until March 18, 2024;
19

20 13. It is anticipated that by March 18, 2024, Plaintiff's Counsel will have returned from
21 paternity leave and the parties will have an answer on the ruling from the Tehama County
22 Superior Court as to Plaintiff's motion for diversion;

23 14. The parties will meet and confer again after Plaintiff's Counsel's return from leave and,
24 within 30 days of March 18, 2024, will either file: (i) a joint status report including a Rule
25 26(f) discovery plan; (ii) a stipulation to further stay this matter pending final resolution
26
27

28 ¹ *Heck v. Humphrey*, 512 U.S. 477 (1994)

1 of the underlying criminal case; or (iii) a joint letter to the Court regarding any
2 disagreements pertaining to staying the civil proceedings any further;

3 15. Any changes to this Stipulation will require the express written consent of Counsel for all
4 parties;

5 16. This Stipulation shall be filed in the California Eastern District federal court; and

6 17. A violation of the Stay afford the wronged party a right to proceed with motion practice
7 and seek sanctions, including attorneys' fees and costs.
8

9
10 Dated: February 29, 2024

MAIRE & DEEDON

11
12 /s/ Patrick L. Deedon
13 PATRICK L. DEEDON
14 TRACEY A. WERNER
15 Attorneys for Defendants,
16 COUNTY OF TEHAMA, TEHAMA COUNTY
SHERIFF'S OFFICE, DAVE KAIN, JESSE
BROWN, and D. GIBSON

17 Dated: February 29, 2024

DEREK SMITH LAW GROUP, LLP

18
19 /s/ Alex Cabeceiras
20 ALEX CABECEIRAS
21 Attorneys for Plaintiff,
22 VIOLA SULLIVAN

23 *[Proposed] Order to follow on next page.*
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**ORDER ON STIPULATION TO STAY MATTER PENDING UNAVAILABILITY OF
PLAINTIFF'S COUNSEL AND FURTHER PROCEEDINGS IN PLAINTIFF'S
UNDERLYING CRIMINAL MATTER IN STATE COURT**

For good cause appearing and based upon the stipulation of the parties, this matter is hereby stayed as follows:

1. This matter is stayed for all purposes, including all discovery and Rule 26 obligations, until March 18, 2024.
2. The parties are to meet and confer again after Plaintiff's Counsel's return from leave and are ordered to file either a joint status report, including a Rule 26(f) discovery plan, a stipulation to further stay this matter, or bring forth any disagreements over a continued stay of this proceeding, no later than April 17, 2024.

IT IS SO ORDERED.

Dated: February 29, 2024


MORRISON C. ENGLAND, JR.
SENIOR UNITED STATES DISTRICT JUDGE